

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Reissue Application Of: Carl-Eric Ohlson

For: METHOD OF MAKING X-RAY PHOTOGRAPHS OR
EXPOSURES OR OTHER TYPE OF RADIATION
SENSING, SUCH AS ELECTRONIC IMAGE
STORAGE, AND A PATIENT TABLE HAVING A
RECEPTOR UNIT FOR SUCH PHOTOGRAPHY,
EXPOSURE OR IMAGE STORAGE

Reissue Application No.: [Continuation of Reissue Application S.N. 09/590,633]

Reissue Application Filing Date: Concurrently herewith

Original Patent No.: 5,764,724

Original Patent Granted On: June 9, 1998

1185 Avenue of the Americas
New York, New York 10036

Assistant Commissioner for Patents
Washington, D.C. 20231
Sir:

COMMUNICATION

This reissue application seeks an interference proceeding with Watanabe U.S. Patent No. 6,155,713 granted on December 5, 2000, and is filed within a year of December 5, 2000, the grant date of the Watanabe patent. A copy of the Watanabe patent is attached hereto as **EXHIBIT G.**

While this application's actual filing date is more than two years after June 9, 1998, the grant date of the original, Ohlson U.S. Patent No. 5,764,724, it is entitled to broadened claims as a continuation of parent reissue application Ser. No. 09/590,633 filed on June 8, 2000, within

two years of the original patent, with broadened claims that timely demonstrated applicant's intent to broaden.¹

Claim 20 herein is a verbatim copy of claim 1 of the Watanabe patent. Support in Ohlson U.S. Patent No. 5,764,724 is demonstrated in two ways in the attachment to this paper:

1. The claim chart attached hereto as **EXHIBIT A** demonstrates an example of support based on Examiner's comments made when rejecting, over Ohlson, Watanabe application claim 1 that became patent claim 1 after being combined with application claim 2. The Final Office Action that made this rejection is attached hereto as **EXHIBIT B**; and
2. The claim chart attached hereto as **EXHIBIT C** demonstrates an example of independent support in Ohlson.

¹ See MPEP § 1451 (Rel.84A-7/00 Pub. 605):

CONTINUATION REISSUE APPLICATIONS

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The decision of *In re Graf*, 111 F.3d 874, 42 USPQ2d 1471 (Fed. Cir. 1997) interprets 35 U.S.C. 251 to permit multiple reissue patents to issue even when the multiple reissue patents are not for "distinct or separate parts of the thing patented."

* * *

Accordingly, prosecution of a continuation of a reissue application will be permitted (despite the presence of the parent reissue) where the continuation complies with the rules for reissue.

See, also, MPEP § 1412.03 (Rel.84A-7/00 Pub. 605):

WHEN A BROADENED CLAIM CAN BE PRESENTED

A broadened reissue claim can be presented within two years from the grant of the original patent in a reissue application. ... Finally, if intent to broaden is indicated in a parent reissue application within the two years, a broadened claim can be presented in a continuing reissue application after two years.

See, also, copy of Rule 1.177 effective November 7, 2000 and comments thereon published in Federal Register, Vol. 65, No. 175, September 8, 2000, pages 54676 and 54644-45, attached hereto as **Exhibit H**.

Claim 21 is a modified version of Watanabe patent claim 1, replacing the phrases "solid state detecting portion formed by plural solid state detector elements" and "solid state detecting portion" with the phrase "radiation receptor for electronic image storage." The claim chart attached hereto as **EXHIBIT D** demonstrates an example of support based on the same Examiner's comments, and the claim chart attached hereto as **EXHIBIT E** demonstrates an example of independent support.

Claim 22 is not constrained by the phraseology of Watanabe claim 1. The claim chart attached hereto as **EXHIBIT F** demonstrates an example of support.

Applicant submits that:

1. The claims in this continuation reissue application are entitled to the dates set forth on the cover page of the Ohlson patent -- a § 371 date and a § 102(e) date of January 28, 1997, and a Swedish priority date of July 28, 1994.
2. All of these dates are before both the U.S. filing date and the Japanese priority date of the Watanabe patent, June 17, 1998 and June 19, 1997, respectively; and
3. The subject matter of the Ohlson patent was published as PCT Publication No. W096/03077 on February 8, 1996, more than a year before the Japanese priority date stated in the Watanabe patent. A copy of WO96/03077 is attached hereto as **Exhibit I**.

Applicant submits that:

1. Ohlson should be granted priority and be declared the senior party in an interference with the Watanabe patent; and
2. Claims 1-26 of the Watanabe patent:
 - a. Correspond to, i.e., are not patentable over, each of claims 20-22 in this reissue application in view of prior art such as that of record in the Watanabe patent; and
 - b. Are not patentable to Watanabe in view of Ohlson alone, including Ohlson's PCT publication, or when combined with prior art such as that of record in Watanabe.

The Final Office Action in the prosecution of the Watanabe patent (attached hereto as **Exhibit B**) states:

The following is statement of the reasons for the indication of allowable subject matter: None of the prior art teaches or suggests employing a detector support similar to that disclosed in Ohlson where the detector can be employed with a below-table and above-table source arrangement. While individually these elements are well known, there is nothing in Ohlson to suggest modifying the support of Ohlson to accommodate these modifications.

Applicant notes, that:

1. Claim 1 in the Watanabe patent does not require **both** above-table and below-table x-ray source positions — it only recites “**at least one of**” above-table and below-table source positions, and thus can be met by prior art having only one such source;
2. Ohlson shows x-ray imaging with **both** above-table and below-table source positions (e.g., Fig. 12, where receptor 2 is horizontal and below the patient table so the beam irradiates the patient from an above-table position, as well as Fig. 17, where receptor 2 is vertical and entirely below the table so the beam irradiates a patient on a wheel chair or a standing patient’s lower extremities from a below-table position); and
3. Prior art such as Khutoryansky, et al. U.S. Patent No. 5,636,259, of record in the Watanabe patent, shows an above table x-ray tube head 112 combined with an additional, below-table x-ray tube head 182.

Applicant requests the Examiner to consider the prior art cited in the Watanabe patent, in the parent reissue application, and in commonly owned patent application Ser. No. 09/449,457 filed on November 24, 1999. Such prior art is cited on Form PTO-1449 and submitted herewith, together with a copy of the commonly owned application and the parent reissue application and the claims currently pending in each.

The Office is hereby authorized to charge any fees that may be required in connection with this communication and to credit any overpayment to our Deposit Account No. 03-3125.

If a telephone interview could advance the prosecution of this application, the Examiner is respectfully requested to call the undersigned attorney.

Entry of this communication and allowance of this application are respectfully requested.

Respectfully submitted,



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